

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
600 CONGRESS AVENUE, SUITE 2400
AUSTIN, TEXAS 78701-3271
WWW.FULBRIGHT.COM

FAX RECEIVED

NOV 01 2002

GROUP 1600

#41

FACSIMILE TRANSMISSION**DATE:** October 31, 2002**MATTER NUMBER:**

MONS:006US/10210093

RECIPIENT(S):	FAX NO.:	PHONE NO.:
Examiner LEGUYADER, JOHN L. U.S. Patent and Trademark Office	(703)305-3014	(703) 308-0447

FROM: Robert E. Hanson**USER ID:** RH10056 **FLOOR:** 20**PHONE:** (512) 536-3085**FAX:** (512) 536-4598**RE:** Serial No. 07/762,762**NUMBER OF PAGES WITH COVER PAGE:** 16**Message:**

Please find enclosed, per the request of Alissa Eagle at Monsanto Company, a copy of the Petition for Withdrawal of Holding of Abandonment and accompanying papers filed 12/9/01 in Serial No. 07/762,762.

CAUTION - CONFIDENTIAL

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL
VIRGINIA VELAZQUEZ AT **(512) 536-3077** AS SOON AS POSSIBLE.

PATENT

ATTORNEY DOCKET NO. MOCO.069.04US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Thompson and Knauf) Examiner: J. L. LeGuyader
Serial No.: 07/762,762) Art Unit: 1635
Filed: 16 September, 1991)
For: Plant stearoyl-ACP desaturase-) TRANSMITTAL
compositions and uses)
_____)
_____)

BOX DAC

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

Transmitted herewith are the following documents in the above-identified application.

- ☐ Small entity status of this Application under 37 CFR 1.9 and 1.27 has been established by a Verified Declaration previously submitted.
- ☒ Petition for Withdrawal of Holding of Abandonment under 37 CFR 1.181(a) or in the alternative under 37 CFR 1.181(f)
- ☒ Copies of "Transmittal Letter and Issue Fee", and "Submission of Substitute Drawings under 37 CFR 1.84" (cover page) that were filed on October 5, 1999, and "Revocation and substitute Power of Attorney", filed July 23, 1999.
- ☒ Terminal Disclaimer to Accompany Petition

Also enclosed:

- ☐ Return postcard (postage prepaid).

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being
facsimile transmitted to the Patent and Trademark
Office:
on

December 9, 2001
(Date)

Barbara Rae-Venter
(Signature)

Barbara Rae-Venter
(Typed or printed name of person signing
certificate)

Thompson and Knauf

Serial No. 07/762,762

The fees have been calculated as shown below:

<u>Claims</u>	<u>Remain after Amend</u>	<u>Highest No. Prev. Paid</u>	<u>Pres. Extra</u>	<u>Small Entity</u>		<u>Large Entity</u>	
				<u>Rate</u>	<u>Fee</u>	<u>Rate</u>	<u>Fee</u>
Total:				x \$9	= \$	x \$18	= \$
Indep:				x \$39	= \$	x \$78	= \$

If Multiple dependent Claims

are used for the first time in this application, add \$130 (small entity) \$260 (large entity).

Total Additional Claims Fee:

\$

<u>Extension of Time Fee</u>		<u>Small Entity</u>	<u>Large Entity</u>
<input type="checkbox"/>	One Month	\$ 55	\$ 110
<input type="checkbox"/>	Two Months	\$190	\$ 380
<input type="checkbox"/>	Three Months	\$435	\$ 870
<input type="checkbox"/>	Four Months	\$680	\$1360
<input type="checkbox"/>	Five Months	\$925	\$1850

Extension of Time Fee:

\$

Other fees (list individually): Terminal Disclaimer to Accompany Petition \$110.00

TOTAL FEES: \$110.00

- ☐ A check including the amount of the above-indicated TOTAL FEES is attached.
- ☒ Please charge Deposit Account No. 18-0020 in the amount of **\$110.00** if the petition to withdraw the holding of abandonment is accepted and a terminal disclaimer is required.
- ☐ No fee is required.
- ☒ Conditional Petition for Extension of Time: An extension of time is requested in the present and/or the above-referenced parent application to provide for timely filing if an extension of time is still required after all papers filed with this transmittal have been considered.

Thompson and Knauf

Serial No. 07/762,762

- [X] The Commissioner is hereby authorized to charge any underpayment of the following fees associated with this communication, including any necessary fees for extension of time, or credit any overpayment to Deposit Account No. 18-0020.
- [X] Any filing fees under 37 CFR 1.16 including fees for the presentation of extra claims.
- [X] Any parent application processing fees under 37 CFR 1.17.
- [X] A duplicate copy of this sheet is attached for accounting purposes.

Respectfully submitted,

Date: December 9, 2001
Barbara Rac-Venter

Barbara Rac-Venter
Barbara Rac-Venter, Ph.D.
Reg. No. 32,750

Rac-Venter Law Group, P.C.
P. O. Box 60039
Palo Alto, CA 94306
Telephone: (650) 328-4400
Facsimile: (650) 328-4477

BRV/JML
Enclosures

FACSIMILE COVER PAGE

DATE: ~~6 June, 2001~~

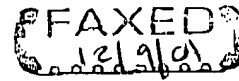
PAGES (INCLUDING THIS PAGE): 16

December, 2001

To: John L. LeGuyader
Supervisory Patent Examiner
Technology Center 1600
United States Patent and Trademark Office
Washington, DC 20231

FAX: 1 (703) 305-7939

FROM: RAE-VENTER LAW GROUP, P.C.
P.O. Box 60039
Palo Alto, CA 94306
USA



Facsimile sent by: Jeffrey M. Libby, Ph.D., Technology Advisor
P-48,251

Application ser. number: 07/762,762
Filed: 16 September, 1991
Title: Plant stearyl-ACP desaturase-compositions and uses
Our reference number: MOCO.069.04US

COMMENTS:

IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES, PLEASE CALL: (650) 328-4400

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PATENT

ATTORNEY DOCKET NO. MOCO.069.04US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Thompson and Knauf

Serial No.: 07/762,762

Filed: 16 September, 1991

For: **Plant stearoyl-ACP desaturase-
compositions and uses**

) Examiner: J. L. LeGuyader

) Art Unit: 1635

) COMMUNICATION

Assistant Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

Attention: Examiner LeGuyader

Sir:

Enclosed herewith are the following documents in the above-identified application filed 16 September, 1991:

As per your request of April 24, 2001, Applicants are submitting the documents shown on the Transmittal to establish timely submission of substitute drawings and issue fee payment for the above-referenced patent application, and to request withdrawal of the holding of abandonment. As the Examiner is aware, two Office errors are involved: (i) misplacement of the timely filed drawings and timely paid issue fee, and (ii) mailing of the Notice of Abandonment to the wrong party with the result that it did not get acted upon in a timely manner. The Examiner's assistance in resolving this matter as not to unfairly prejudice the applicant's rights by necessitating a terminal disclaimer would be appreciated.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being
facsimile transmitted to the Patent and Trademark
Office:
on

December 9, 2001
(Date)

Barbara E. Venter
(Signature)

Barbara E. Venter
(Typed or printed name of person signing
certificate)

Thompson and Knauf

Serial No. 07/762,762

Respectfully submitted,

Date:

December 9, 2001
June 6, 2004 BRV



Barbara Rae-Venter, Ph.D.
Reg. No. 32,750

Rae-Venter Law Group, P.C.
P. O. Box 60039
Palo Alto, CA 94306
Telephone: (650) 328-4400
Facsimile: (650) 328-4477

BRV/JML
Enclosures

PATENT

ATTORNEY DOCKET NO. MOCO.069.040/S

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Thompson and Knauf

) Examiner: J. L. LeGuyader

Serial No.: 07/762,762

) Art Unit: 1635

Filed: 16 September, 1991

) PETITION TO WITHDRAWFor: Plant stearoyl-ACP desaturase-
compositions and uses) HOLDING OF ABANDONMENT) UNDER 37 CFR 1.181(a) OR IN) THE ALTERNATIVE UNDER 37) CFR 1.181(d)

)

BOX DAC

Assistant Commissioner For Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition to revive the above-referenced application, for which a Notice of Abandonment (Paper No. 40) was mailed on February 15, 2000. The basis for the holding of abandonment was failure to timely file new formal drawings as required in the Notice of Allowability dated August 2, 1999. As shown below, this holding of abandonment is erroneous because formal drawings were timely filed.

Statement of Facts

1. A Notice of Allowability was mailed August 2, 1999.
2. A Notice of Allowance and Issue Fee Due was mailed on September 2, 1999.
3. Formal drawings were mailed and the issue fee was paid with a Certificate of Mailing on October 5, 1999.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being
facsimile transmitted to the Patent and Trademark
Office:
on

December 9, 2001

(Date)

Barbara Koo-Verter

(Signature)

(Typed or printed name of person signing
certificate)

Thompson and Knauf

Serial No. 07/762,762

4. A Notice of Abandonment was mailed February 15, 2000 for failure to timely file substitute drawings as required in the Notice of Allowance and Issue Fee Due.
5. On or about April 24, 2001, Examiner LeGuyader in a telephone conversation indicated that the drawings had been received at the PTO in a timely manner, however they had been misplaced and only recently found.

Request for Withdrawal of Holding of Abandonment

Applicants respectfully assert that the holding of abandonment is in error because the drawings were timely filed and the issue fee was timely paid, as indicated by the Certificates of Mailing on the "Transmittal Letter and Issue Fee" and the "Submission of Substitute Drawings under 37 CFR 1.84" each dated October 5, 1999. Applicants have attached hereto a copy of the "Transmittal Letter and Issue Fee" and a copy of the cover page of the "Submission of Substitute Drawings under 37 CFR 1.84" as proof of timely filing of substitute drawings and payment. Therefore, Applicants respectfully request that the holding of abandonment be withdrawn.

Request for Waiver of Requirement for Terminal Disclaimer

Applicants note that a Petition to Withdraw a Holding of Abandonment may be dismissed as untimely if not filed within two months of the holding of abandonment under 37 CFR 1.181(f). The latter provides that the petition will not be dismissed as untimely if a terminal disclaimer is provided for cases filed before June 8, 1995, but that the office may suspend or waive the requirements of 37 CFR 1.181(f). MPEP 711.03(c)I. Applicants retroactively request waiver of the requirements for filing a terminal disclaimer on the basis that the entire delay in notifying the office of the error was unintentional. Applicants filed a revocation and appointment of new power of attorney on June 23, 1999 (copy attached) requesting that all future correspondence be sent to the undersigned attorney. The notice of abandonment was mailed instead to Calgene, Inc., in Davis, California. Due to the facts that (i) the in-house counsel at Calgene responsible for this case, Carl Schwedler, was in the process of leaving the company, (ii) internal organizational changes at Calgene in the second quarter of 2000 as a result of Carl's departure were taking place, and (iii) because the undersigned law firm who was representing

Thompson and Knauf

Serial No. 07/762,762

Applicants should have been the entity receiving documents relating to this file, the notice of abandonment was not entered into Calgene's docketing system. After Carl's departure from Calgene, the files on which he had been working were sent to Monsanto Company in St. Louis where, in about April 2001 during a routine review of files that the undersigned law firm was handling, the Notice of Abandonment was discovered. Since the original error in sending the Notice of Abandonment to Calgene is the proximate cause of delay in responding, applicants respectfully request a waiver of the requirement to file a terminal disclaimer.

Terminal Disclaimer

In the event that the Office will not waive the requirements for filing a Terminal Disclaimer, Applicants have attached hereto a Terminal Disclaimer disclaiming the term of the patent equivalent to the period between February 15, 2000 and the mailing date of this petition with instructions to charge the requisite fee to the undersigned's deposit account.

Respectfully submitted,

Dated:

December 9, 2001
Barbara Rac-Venter BRV

Barbara Rac-Venter, Ph.D.

Reg. No. 32,750

Rac-Venter Law Group, P.C.
P. O. Box 60039
Palo Alto, CA 94306
Telephone: (650) 328-4400
Facsimile: (650) 328-4477

BRV/JML

Enclosures:

Copy of Transmittal Letter and Issue Fee

Copy of Submission of Substitute Drawings under 37 CFR 1.84 (cover page)

Copy of Revocation and Substitution of Power of Attorney

TERMINAL DISCLAIMER TO ACCOMPANY PETITION

Docket Number
MOCO.069.04US

In re Application of: Thompson and Knaut
Application No.: 07/762,762
Filed: 16 September, 1991
For: Plant Steroyl-ACP desaturase-Compositions and Uses

The assignee is Calgene, Inc. The assignment was recorded in the Patent and Trademark Office on 18 November 1991 at Reel 5916, Frame 068.

The undersigned attorney has reviewed all the documents in the chain of title of the instant application and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above.

The owner*, Calgene, Inc, of 100% interest in the above-identified application hereby disclaims the period equal to February 15, 2000 to December 10, 2001 of any patent granted on the above-identified application or on any application that contains a specific reference under 35 U.S.C. 120, 121, of 365(c) to the application. This disclaimer is binding upon the grantee, its successors or assigns.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record.

December 9, 2001
Date

Barbara Rae-Venter
Signature

BARBARA RAE-VENTER, Ph.D.
Reg. No. 32, 750

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

>*Certification under 37 C.F.R. 3.73(b) is required if terminal disclaimer is signed by the assignee. <

THE STATEMENT BELOW IS FOR OFFICE USE ONLY

In accordance with the decision granting the petition filed on _____, this terminal disclaimer is accepted. The period of abandonment specified above has been specified above as equivalent to _____ months.

Petitions Examiner

COPY

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231. on 10-5-99, 1999.

By *[Signature]***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

17169/04

In re the Application of)	
Thompson, G., et al.	)	Serial No. 07/762,762
Examiner: Leguyader, J..	)	Allowed: August 2, 1999
Filed: September 16, 1991	)	Batch No.: W48
For: PLANT DESATURASES	)	SUBMISSION OF SUBSTITUTE
<u>COMPOSITIONS AND USES</u>	)	DRAWINGS UNDER 37 CFR
	)	1.84

Honorable Commissioner of
Patents and Trademarks
Washington, DC 20231

OFFICIAL DRAFTSMAN

Dear Sir:

This letter is in response to the Draftsmen's comments mailed on August 2, 1999 objecting to the drawings as submitted by Applicants in a communication of September 16, 1991. Provided herewith are substitute drawings for Figure 1-10. The substitute drawings are in compliance with the requirements for formal drawings made in this case under 37 CFR § 1.84.

No substantial modifications have been made to these substitute drawings.

A conditional petition for an Extension of Time is requested to provide for the timely filing if an extension of time is required after all papers filed with this transmittal have been considered.

The Commissioner is GENERALLY authorized to charge any required fees, with the exception of an Issue Fee, relating to this paper to Deposit Account No. 03-0173.

In the event that there are any questions regarding these Figures, the Draftsman is invited to contact the undersigned at (530) 753-6313.

Respectfully submitted,



Carl J. Schwedler
Reg. No. 38,924

CALGENE LLC
1920 Fifth Street
Davis, CA 95616
(530) 753-6313

Enclosure: Figures 1-10

COPY

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 10-5-99
(Date of Deposit)

By E. J. Leguyader

#17169/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of)

Thompson, G., *et al.*)

Serial No. 07/762,762)

Filed: September 16, 1991)

Allowance: August 2, 1999)

For: PLANT DESATURASES
COMPOSITIONS AND USES)

Examiner: Leguyader, J.

Art Unit: 1635

Batch No.: W48

**TRANSMITTAL LETTER
AND ISSUE FEE**

Honorable Commissioner of
Patents and Trademarks
Washington, DC 20231
Box **ISSUE FEE**

Sir:

In response to the Notice of Allowance and Issue Fee Due mailed on August 2, 1999

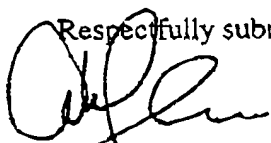
Applicant submits the following documents:

- Part B - Issue Fee Transmittal

A conditional petition for an Extension of Time is requested to provide for the timely filing if an extension of time is required after all papers filed with this transmittal have been considered.

The Commissioner is further authorized to charge any required fees relating to this paper, including the Issue Fee, to Deposit Account No. 03-0173.

Respectfully submitted,


Carl J. Schwedler
Reg. No. 36,924

CALGENE LLC
1920 Fifth Street
Davis, CA 95616
(530) 753-6313

FROM : CALGENE LLC

PHONE NO. : 530 792 2463

Jun. 23 1999 10:59AM P2

COPY

I hereby certify that this correspondence is being transmitted by facsimile addressed to Examiner LeGuyader, Art Unit 1804, Facsimile Number (703) 305-7939, at the United States Patent and Trademark Office, Washington, D.C., 20231, on June 3, 1999.

By Rachel Vieira

Docket No.: 17169/04
(formerly CGNE 69-4)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of)	
	)	Examiner: John LeGuyader
Thompson, et al.)	
	)	Art Unit: 1804
Serial No. 07/762,762)	
)	
Filed: September 16, 1991	)	REVOCATION AND SUBSTITUTION
	)	<u>OF POWER OF ATTORNEY</u>
For: Plant Steroyl-ACP Desaturases -)	
<u>Compositions and Uses</u>)	

Honorable Commissioner of
Patents and Trademarks
Washington, DC 20231

Sir:

The undersigned, an authorized representative of Calgene LLC (formerly Calgene, Inc.), which has a place of business at 1920 Fifth Street, Davis, California, 95616, hereby revokes all powers of attorney previously granted in this application and hereby appoints:

Barbara Rae-Venter
Reg. No. 32,750

Carl J. Schwedler
Reg. No. 36,924

Alissa Eagle
Reg. No. 37,126

as attorneys with full power of substitution and revocation to prosecute this application and to transact all business in the United States Patent and Trademark

FROM : CALGENE LLC

PHONE NO. : 530 792 2463

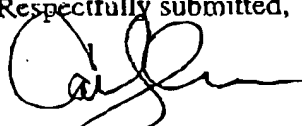
Jun. 23 1999 11:00AM P3

Office connected therewith, and hereby requests that all correspondence regarding this application be sent to the firm of:

Barbara Rae-Venter
Rae-Venter Law Group
260 Sheridan Avenue #440
Palo Alto, CA 94306

(650) 328-4400
(650) 328-4477 (facsimile)

Respectfully submitted,



By: Carl J. Schwedler
Assistant Secretary

Date 6/23/99

Calgene LCC
1920 Fifth Street
Davis, CA 95616
(530) 753-6313
(530) 792-2453 (facsimile)